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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY



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February 3, 1998

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, DC 20554

RE: *Ex Parte* - CC Docket No. 96-115  
Telecommunications Carriers' Use of Customer Proprietary Information  
and Other Carrier Information

Dear Ms. Salas:

Earlier today, Judy Sello, Jim Spurlock, and I, all of AT&T, met with Paul Gallant of Commissioner Gloria Tristiani's office. We discussed AT&T's positions as previously presented in this proceeding.

In particular, we discussed: (1) the definition of telecommunications service, (2) carriers' abilities to access, use, and disclose CPNI, (3) the BOCs' CPNI disclosure obligations to the CLECs, and (4) carriers' CPNI customer notification and approval requirements. The materials used during this discussion are attached.

In accordance with Section 1.1206(a)(2) of the Commission's rules, the original and four copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Charles Griffin".

Attachments

cc: P. Gallant

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## Definitions 1996 Telecommunications Act

**Telecommunications Carrier:** any provider of telecommunications services . . . . A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services . . . .

**Telecommunications Service:** the offering of telecommunications for a fee directly to the public, or such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telecommunications:** the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Information Service:** the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control or operation of a telecommunications system or the management of a telecommunications service.

### **Section 254: Universal Service**

-All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. (b)(4)

-Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service . . . . Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires. (d)

-A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute on an equitable and nondiscriminatory basis in a manner determined by the State to the preservation and advancement of universal service in that State. (f)

## CPNI

Goal: to best serve consumer needs through offering them a full range of communications services and products

to offer customers the most efficient service options; anticipate and solve problems

### 222(c)(1) "Telecommunications Service"

- most consistent with the Act's definition of "telecommunication service" as "basic" service to allow carriers to use CPNI, without prior customer approval, for provision of all basic transmission services -- long distance, local, and wireless, as well as enhanced features that are "parts of" or "adjuncts to" basic and are "used in" provision of service
- consistent with customer expectations that:
  - carriers are knowledgeable about their communications needs
  - carriers will use CPNI to develop and market new and innovative services
  - carriers will offer "one-stop shopping" convenience
- allows carriers to meet customer needs without compromising consumer privacy
  - Longstanding FCC policy: broad use of customer information within a firm promotes consumer welfare and does not compromise privacy
- advances 1996 Act's goal of "opening all markets to competition"; blurring of product market distinctions; integrated service packages; single bill
- an even broader interpretation of 222(c)(1) to allow use of CPNI for all basic services as well as all stand-alone enhanced services and CPE would be even more pro-consumer

- customers do not rely on basic/enhanced/CPE regulatory distinction
- customers want packages of integrated services and products to meet their needs

### "Approval"

- "approval," if deemed required, should be limited to use of CPNI for "stand-alone" non-telecommunications services and products (enhanced, CPE, other)
- "approval" can be inferred from informed participation in the customer-carrier relationship
  - one-time notice advising customers of CPNI rights
  - opportunity to withdraw consent for use of CPNI for any purpose other than basic service
  - negative "opt-out" ensures customers know their rights and can control carrier's CPNI use
    - Caller ID per-call blocking analogy and preemption of default-line blocking; i.e., burden on consumer to invoke privacy (rather than undo a restriction)
  - negative option avoids inadvertent CPNI restriction through customer inaction
  - positive option does not give customer's better control

Consistency between federal and state rules important to allow efficient operations and avoid customer confusion

CPNI transfers between local exchange carriers must be seamless

- Section 222(d) allows "disclosure" of CPNI to another carrier that wins customer so that latter can "initiate" service
  - 222(c)(2) does not require written approval for this purpose
  - whatever consent sufficient to transfer service, including verbal consent, must be sufficient to effect information transfer to the new local service provider

Balances:

- consumer privacy
- customer information
- carrier efficiency

## **AT&T'S CPNI POSITION**

### **SECTION 222**

-Construe 222(c)(1) to allow carriers to use CPNI for all of a carrier's basic service (local, long distance, wireless) without prior customer authorization

-Require one-time notice and opportunity for customers to withdraw consent for use of CPNI for non-telecommunications services (negative opt-out approval)

### **SECTION 272 and 274**

-Although section 222 does not generally impose differing requirements on various categories of carriers, section 272 and 274 impose explicit additional nondiscrimination obligations on BOCs

-Section 272(c)(1)'s unqualified nondiscrimination obligation requires BOCs to treat all other entities in the same manner in which they treat their section 272 affiliates

-FCC has already concluded in Docket 96-149 that a BOC must provide to unaffiliated entities the same goods, services and information that it provides its section 272 affiliate at same rates, terms and conditions

-Joint marketing provisions do not alter these obligations because access to BOC CPNI is not a component of marketing or sales activity

### **BOC DUTIES, TAKING SECTIONS 222 and 272 TOGETHER**

-A BOC cannot use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of its section 272 affiliate, unless the CPNI is made available to all competing entities on nondiscriminatory terms

-If the section 272 affiliate obtains express written consent (in the same manner than any other unaffiliated third party could), then the BOC may disclose CPNI to its 272 affiliate without disclosing it to unaffiliated entities

-However, if a BOC uses CPNI without customer consent (or any form of consent other

than affirmative written consent), it must disclose the CPNI to all other entities desiring access to it on the same terms and conditions

-Similar analysis governs the interplay between Sections 222 and 274

#### **BOC Solicitation of Customer Approval to Use CPNI**

-If a BOC solicits customer approval to use CPNI on behalf of, or to disclose CPNI to, its section 272 or 272 affiliate, it must offer an "approval solicitation service" to unaffiliated entities, otherwise it would be engaging in preferential conduct towards its affiliate

-To be nondiscriminatory, a BOC would have to obtain approval for disclosure of the CPNI to all competing entities at the same time as for its affiliate; and the CPNI must be made available to any unaffiliated entity desiring to receive it under the same terms and conditions, and at the same time, as to the BOC-affiliated entity

#### **Rule to Reflect Interplay between Sections 222 and 272**

AT&T suggests the following rules to reflect the interplay between sections 222 and 272 of the 1996 Act:

(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the affiliate required by section 272 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 272 affiliate itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI.

(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 272 affiliate, the BOC must simultaneously seek such authorizations on behalf of its section 272 affiliate and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI for the benefit of its section 272 affiliate, until the transaction has been posted and a 10-day waiting period has elapsed.

**Rule to Reflect Interplay between Sections 222 and 274**

AT&T suggests the following rules to reflect the interplay between sections 222 and 274 of the 1996 Act:

(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the separated affiliate, electronic publishing joint venture, or teaming or business arrangement under section 274 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 274 separated affiliate, electronic publishing joint venture, or teaming arrangement itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI.

(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement, the BOC must simultaneously seek such authorizations on behalf of such entity and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement until the transaction has been posted and a 10-day waiting period has elapsed.